

**STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT/LETTER OF AGREEMENT
FOR CONSULTANT SERVICES
BETWEEN**

Media One Inc. #12033887
3918 S. Western Avenue
Sioux Falls, SD 57105-6513
Referred to as "Consultant"

South Dakota Department of Health
Health and Medical Services
615 East 4th Street
Pierre, SD 57501
Referred to as "State"

State and Consultant hereby enter into a contract for Consultant Services.

I. CONSULTANT

- A. The term of this Contract shall begin December 1, 2009 and end May 31, 2010. State will not pay for any services provided by Consultant unless this contract is signed by all parties **BEFORE CONSULTANT BEGINS TO PROVIDE SERVICES.**
- B. Consultant is not a full or part-time employee of State or any agency of the state of South Dakota.
- C. Consultant, as an independent contractor, is solely responsible for the withholding and payment of applicable income and Social Security taxes due and owing from money received under this contract.
- D. Consultant will not use equipment, supplies or facilities owned by the state of South Dakota.
- E. Consultant will not purchase capital assets or equipment using State funds.
- F. Consultant agrees to:
 1. Develop a written plan for each of three years to increase public awareness of the value of colorectal cancer screening and knowledge of the free screening opportunity.
 2. Develop a program brand, including name and logo that meets Department of Health requirements.
 3. Develop initial culturally appropriate print materials for the general population and for the Native American population.

4. Develop integrated web pages for the DOH cancer programs to be housed within the DOH web site.

5. Develop additional creative materials appropriate to the three year strategic plan as negotiated with the CRC Program staff.

G. **INSURANCE:** Consultant agrees, at its sole cost and expense, to maintain the following insurance:

1. Commercial General Liability Insurance:

Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this contract or be no less than two times the occurrence limit.

2. Certificates of Insurance:

Prior to commencement of work under this Contract, Consultant shall furnish State properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract and promptly provide updated Certificates of Insurance on an ongoing basis. Such insurance shall not be canceled, except on 30 days' prior written notice to State. Consultant shall furnish copies of insurance policies if requested by State.

H. Consultant agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of performing services hereunder. This section does not require Consultant to be responsible for or defend against claims or damages arising solely from acts or omissions of State, its officers, agents or employees.

I. This contract does not require Consultant to engage in a function or activity involving the use or disclosure of the State's Protected Health Information (PHI) as defined in the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR §164.501.

II. STATE

A. State will pay, upon State's satisfaction that services have been completed, up to \$175,000.00.

B. State will not pay Consultant expenses as a separate item.

C. **TOTAL CONTRACT AMOUNT (Not to Exceed) \$175,000.00.**

D. State will not be held liable for reimbursement of amounts shown on an itemized billing if not received within 30 calendar days from the close of the month being reported.

E. State agrees to:

1. Remit payment for services upon receipt of a request for payment on an invoice.

III. OTHER PROVISIONS

A. **INTEGRATION/CHOICE OF LAW AND FORUM:** This contract contains the entire agreement between the parties, and may be amended only in writing signed by both parties. Each amendment shall be attached to and become a part of this contract. The terms and conditions of this contract are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract, which cannot be resolved by mutual agreement, will be tried in Sixth Judicial Circuit Court, Hughes County, South Dakota.

B. **TERMINATION:** This contract can be terminated upon thirty (30) days written notice being received by the other party and may be terminated for cause by State at any time with or without notice.

C. **NOTICE:** Any notice or other communication required under this contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Consultant Contact Person on behalf of Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

D. **FUNDING TERMINATION:** This contract depends upon the continued availability of appropriated funds and expenditure authority from Congress, the Legislature or the Executive Branch for this purpose. This contract will be terminated for cause by State if Congress, the Legislature or Executive Branch fails to appropriate funds, terminates funding or does not grant expenditure authority. Funding termination is not a default by State nor does it give rise to a claim against State.

E. **LOBBYING:** Consultant agrees to not use any of the funds received pursuant to this contract for lobbying purposes. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, the Consultant is in compliance with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including Certification and Disclosure, 29 C.F.R. § 93.110 (1990).

F. **NONASSIGNMENT/SUBCONTRACTING:** Consultant shall not assign this contract, or any portion thereof, without the prior written consent of State. Consultant's assignment or attempted assignment of this contract, or any portion thereof, without State's prior written consent constitutes a material breach of contract. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of State. Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this contract to indemnify the State, and to provide insurance coverage in a manner consistent with this contract. Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

G. **REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE:** Consultant agrees to report promptly to State any event encountered in the course of performance of this contract which results in injury to the person or property of third parties, or which may otherwise subject Consultant or State to liability. Reporting to State under this section does not satisfy Consultant's obligation to report any event to law enforcement or other entities as required by law.

H. **SEVERABILITY:** In the event that any term or provision of this contract shall violate any applicable law, such provision does not invalidate any other provision hereof.

I. **SMOKE FREE WORK PLACE:** Consultant agrees that no person may smoke tobacco or carry any lighted tobacco product in any public place or place of employment where any services pursuant to this contract are rendered.
SDCL §§ 22-36-2 to 22-36-4.

J. **DRUG FREE WORK PLACE:** Consultant agrees to encourage all its employees to refrain from using illegal drugs which may affect an employee's ability to perform the essential functions required under the terms and conditions of this contract. State reserves the right to terminate this contract if Consultant, or any of its employees or agents, is convicted of

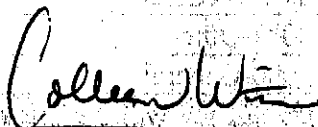
using illegal drugs. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with the requirements of the "Drug-Free Workplace Act" (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. §§ 701 et seq.).

- K. **RECYCLING:** State strongly encourages Consultant to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.
- L. **CIVIL RIGHTS POLICY:** Both parties agree to provide services covered by this contract without regard to race, color, sex, religion, national origin, creed, marital status, age or disability as prohibited by state or federal law.
- M. **AUDIT REQUIREMENTS:**
(EXPENDING \$500,000 OR MORE)
A nonprofit subrecipient, (as well as profit hospitals) (Consultant), expending \$500,000 or more in one year in Federal awards, must have an annual audit made in accordance with Office of Management and Budget Circular A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions and the Auditor General's guidelines.
All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General's approval should be obtained annually. The auditor must follow the Auditor General's guidelines when conducting the audit. The draft audit report must be submitted to the Auditor General for approval prior to issuing the final report. The auditor must file the requested copies of the final audit report with the Auditor General. Audits shall be completed and filed with granting agencies by the end of the ninth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. If it appears that a required audit cannot be completed by the end of the ninth month following your fiscal year, you must request an extension from the federal agency for which the majority of federal expenditures relates.
Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.
- N. **PERSONNEL:** Neither the Consultant nor any employee or agent thereof will hold him or herself out as or claim to be an officer or employee of State and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of State including, but not limited to, workers' compensation, health, life, malpractice insurance, and retirement membership or credit.
- O. **CONTRACT ORIGINAL AND COPIES:** An original of this contract will be retained by the State Auditor's Office. A photocopy will be on file with the South Dakota Department of Health and a second original will be sent to Consultant.
- P. **RECORD RETENTION/EXAMINATION:** Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of three years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.
- Q. **FEDERAL AND STATE LAWS:** Consultant agrees that it will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract, including Section 306 of the Clean Air Act and Section 508 of the Clean Water Act.
- R. **AMERICANS WITH DISABILITIES ACT:** Consultant agrees to provide all services required in this contract in compliance with the Americans With Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213, and any amendments thereto.
- S. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:** Consultant agrees that neither Consultant, nor any of Consultant's principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency. Consultant will provide immediate written notice to the Department of Health, Division of Administration (600 East Capitol Avenue, Pierre, SD 57501 (605) 773-3361), if Consultant, or any of Consultant's principals, becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions involving Federal funding. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with all applicable regulations pursuant to Executive Order 12549, including Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. § 98.510 (1990).
- T. **OWNERSHIP:** All reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses, or other products produced as a result of the services rendered under this contract, excluding medical records kept in the normal course of Consultant's business, will become the sole property of State. State hereby grants Consultant the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of Consultant's business for any lawful purpose. Either the originals, or reproducible copies satisfactory


to State, of all technical data, evaluations, reports and other work product of Consultant shall be delivered to State upon completion or termination of services under this contract.

- U. **FORCE MAJEURE:** Neither Consultant nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this contract, "force majeure" means acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.

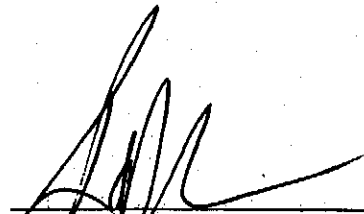
The parties signify their agreement by signing below.


Colleen Winter, Director
Health and Medical Services
Department of Health


12-7-09
Date


Consultant Signature
Media One, Inc.
John P. Filtsdal, Pres.
Print or Type Consultant Name

11-23-09
Date


Kari J. Weisbeck
Administrator, Financial Management
Department of Health

12-9-09
Date


Laurie R. Gill, Deputy Secretary of Health
Division of Administration
Department of Health

12-10-09
Date

State Contact Person: Norma Schmidt

Phone: (605)773-5728

Consultant Contact Person:

Phone:

The following shall be completed by the Consultant:

Nonprofit ☐ Profit ☐

Consultant fiscal year beginning _____ and ending _____

The following shall be completed by the State:

Subrecipient status _____ OR Vendor status _____

MSA Account code 5204 _____

Fund Source Name:	Fund Source Name:	Fund Source Name:
CFDA No:	CFDA No:	CFDA No:
Program: 0904031	Program:	Program:
CO: 2018-Federal \$175,000.00	CO: 2018-Federal	CO: 2018-Federal
3047-Other	3047-Other	3047-Other
1000-General	1000-General	1000-General

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor's policy handbook.

11-13-04-01
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